IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.10049 OF 2004

Lalbahadur Baliram Madhavi .... Petitioner
Vs.
Parsik Janata Sahakari Bank Ltd., and others .... Respondents

Ms Hutoxi Tavadia i/b Shri M.M. Thorat for the Petitioner.

Sarvasri P.K. Rele with Piyush Shah and D.M. Utekar for the Respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: DECEMBER 17, 2004

P.C:

1. Heard the learned Advocates for the parties.

2. The petitioner challenges the order passed by the Industrial Court on 25-10-2004 in Complaint (ULP) No.341 of 2002 rejecting the application filed by the petitioner for direction to the respondents to allow the petitioner to appoint one Shri Avadhut Rane as the defence's representative in the domestic enquiry in relation to the chargesheet dated 7-6-2002. The Industrial Court referring to the provisions of Clause 22(4) of the Certified Standing Orders applicable to the parties r/w Section 30 of the Bombay Industrial Relations Act, 1946, hereinafter referred to as "the

said Act" has dismissed the said application. Undisputedly, Shri Rane is neither a member of the representative union nor in any manner concerned with the activities of the representative union. The resolution under which Shri Rane is sought to be appointed to represent the employee in the domestic enquiry discloses that he was appointed as an expert adviser to defend the employees on behalf of the union. Placing reliance in the decisions of the Apex Court in the matter of **J.K. Aggarwal v. Haryana Seeds Development Corporation Ltd. & Ors.,** reported in 1991 I CLR 988 and **Crescent Dyes & Chemicals Ltd. v. Ram Naresh Tripathi,** reported in 1993 I CLR 253, the learned Advocate for the petitioner submitted that Section 30 of the said Act permits representation by a representative union and in order to understand what the representation of a union is, one has to refer to the provisions of Section 33 which clearly disclose that such an union can be represented by another person, besides that it gives ample discretion to the Court to permit the employee to be represented even by a legal practitioner. She has further submitted that in the facts and circumstances of the case which disclose that the management was represented by a legally trained person, denial of right to the employee to be represented by a person conversant with the procedure relating to domestic enquiries virtually disclose non-compliance of the basic

principles of natural justice. She has also submitted that the charge against the employee being of a serious nature and the management being represented by a legally trained representative, it was necessary for the Court to appreciate the need of the employee being represented by an equally trained person. Besides, it is contended that the respondents have not disclosed that any prejudice would be caused to the respondents if the petitioner is allowed to be represented either by Shri Rane or by a legally trained person.

3. Undisputedly, the Clause 22(4) of the Certified Standing Orders deals with the matter relating to the right of the employee to be represented in the domestic enquiry and it reads thus:-

> "An employee against whom an inquiry has to be held shall be given a charge sheet clearly setting forth the circumstances appearing against him and requiring explanation. He shall be given an opportunity to answer the charge and permitted to be defended by his representative under section 30 of the Bombay Industrial Relations Act, 1946. Except for reasons to be recorded in writing by the officer holding an

> enquiry, the employee shall be permitted to produce witnesses in his defence and cross examine and witness on whose evidence the charge rests. A concise summary of the evidence led on either side and the employee's plea shall be recorded."

Obviously the clause relates to Section 30 of the said Act. It is the contention of the petitioner that in terms of Clause (i) of Section 30 of the said Act the petitioner is entitled to be represented by a representative union and the petitioner had accordingly appointed Shri Rane to be the representative considering the fact that Section 33 of the said Act permits a representative union to appoint any person of his choice. Undoubtedly, Section 30(i) provides that subject to the provisions of Section 33A a representative union for the industry in question shall be entitled to appear or act as the representative of the employees in an industry in any local area. The expression "Union" therein refers to a "representative union for such industry". Obviously it means that the union has to be a representative one, in relation to the industry in which the employee is employed. Undoubtedly, Section 33 provides that:-

"33. Appearance for employee: Notwithstanding anything contained in any other provision of this Act an employee or a representative union shall be entitled to appear through any person,

(a) in all proceedings before the Industrial;

(aa) in all proceedings before a wage board;

(b) in proceedings before a Labour Court for deciding whether a strike, lock-out, closure or stoppage or change or an order passed by an employer under the standing orders is illegal;

(c) in such other proceedings as the Industrial Court may, on application made in that behalf, permit:

Provided that a legal practitioner shall not be permitted under clause (c) to

> appear in any proceeding under this Act except before a Labour Court as provided in section 83A or the Industrial Court:
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> Provided further that subject to the provisions of section 33A, no employee shall be entitled to appear through any person in any proceeding under this Act not being a proceeding before a Labour Court or the Industrial Court in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service or suspension of an employee is under consideration in which a Representative Union has appeared as the representative of employees:
>
> Provided also that save as aforesaid, any person other than the Representative Union or legal practitioner shall not be permitted to appear on behalf of an employee in any proceeding before any Court under this Act, save with the permission of the Court."

Undoubtedly, Section 33 refers to representation of any

person but it is restricted to the forum of Industrial Court, Wage Board and the Labour Court. It does not refer to any other forum. As regards the domestic enquiry, the law is well-settled by the decision of the Apex Court in **Crescent Dyes's** case (supra) wherein it has been ruled that:-

> "It is, therefore, clear from the above case law that the right to be represented through counsel or agent can be restricted, controlled or regulated by statute, rules, regulations or Standing Orders. A delinquent has no right to be represented through counsel or agent unless the law specifically confers such a right. The requirement of the rule of natural justice insofar as the delinquent's right of hearing is concerned, cannot and does not extend to a right to be represented through counsel or agent."

Being so, and considering the fact that the rules applicable to the parties specifically provide that the employee in domestic enquiry can be represented by the representative union for the industry in question, as has been stipulated under Section 30 of the said Act,

reference to Section 33 to understand the scope of the representation permissible to the employees in domestic enquiries in terms of Section 30 would virtually amount to read down Section 30 by incorporating therein the expression used "any person" from Section 33. When the provision of law comprised under Section 30 is very clear in relation to the representation permissible to the employees in domestic enquiries, such an exercise under the guise of interpretation of the provisions of law is not permissible.

4. It is also to be noted that the expression used in Section 30 of the said Act is "a Representative Union for such industry" which section therefore discloses that the person who can represent the employee in a domestic enquiry has necessarily to be a person directly connected with the union in the industry in question and further the same should be a representative union. Being so, a person who is not concerned with the representative union in the industry in question can by no stretch of imagination be said to be a person who can be allowed to represent employees in the domestic enquiries. Considering the same, no fault can be found with the impugned order rejecting the representation of the employee by Shri Rane who is not disclosed to be a person having any concern with the activities of the representative union for the industry in question.

5. The reference to the decision of the Apex Court in **J.K. Aggarwal's** case (supra) is of no help to the petitioner. Attention was drawn to para 9 of the said decision in the course of the arguments wherein it has been held by the Apex Court that "On a consideration of the matter, we are persuaded to the view that the refusal to sanction the service of a lawyer in the inquiry was not a proper exercise of the discretion under the rule resulting in a failure of natural justice;" while contending that there was improper exercise of discretion by the Industrial Court in rejecting the representation by Shri Rane. The Apex Court in J.K. Aggarwal's case was dealing with the provision of law comprised under the Rule 7(5) of the Haryana Civil Service (Punishment & Appeal) Rules, 1952 which specifically provided that "If the charge or charges are likely to result in the dismissal of the person from the service of the government, such person may, with the sanction of the enquiry officer, be represented by counsel." and it was in connection with the said provision of law which specifically provide that when the charge is of a serious nature and it can result in the dismissal of the Government employee, such an employee can request for being represented by a counsel in the enquiry and if such a request is made, same shall be considered by the enquiry officer in the

facts and circumstances of the case. That is not the case in hand. In Clause 22(4) of the Certified Standing Orders, nor the Section 30 of the said Act speaks of entitlement of the employee to be represented by any counsel or any person stranger to the industry. Being so, reference to the decision in J.K. Aggarwal's case can be of no help to contend that there was improper exercise of discretion on the part of the Industrial Court in refusing the application of the petitioner to allow the employee to be represented by Shri Rane.

6. The contention about the charge being serious and that the management is represented by a legally trained person and further that no prejudice being disclosed if the petitioner is allowed to be represented either by Shri Rane or by a legally trained person, it is to be noted that the application was not for allowing the petitioner to be represented by any legally trained person as such. The application was specifically to allow the petitioner to be represented by Shri Rane. The issue as to whether the petitioner can be allowed to be represented by any legally trained person was not before the Industrial Court and, therefore, it is not necessary to deal with the submissions in relation to the point as to whether the petitioner is entitled to be represented by any counsel or an Advocate or a legally trained person as the said point does not arise in this

petition against the impugned order. As the issue before the Industrial Court was as to whether the petitioner could be represented by Shri Rane, all the other points do not arise for consideration. In any case, the issue in relation to prejudice is totally irrelevant as the law is well-settled on the point that the representation has to be in accordance with the statutory provisions applicable to the parties. Once it is clear that Clause 22(4) of the Certified Standing Orders r/w Section 30 of the said Act permits representation by the representative union for the concerned industry, the dismissal of the application seeking permission to be represented by Shri Rane, who is not concerned with the activities of the representative union in the industry in question, and merely because he is sought to be appointed as an expert or legal adviser, and on that count being granted by the union and its Vice President, that could not be a justification for allowing him to represent the employee in domestic enquiry and therefore no fault can be found with the impugned order nor it can be said that the Industrial Court has exercised its discretion arbitrarily or illegally. Being so, there is no case for interference in the impugned order in exercise of writ jurisdiction under Article 227 of the Constitution of India. Hence the petition is rejected.

7. At this stage, on request by the learned Advocate for the petitioner, further proceedings in the domestic enquiry shall remain suspended for a period of four weeks from today.